

50 CFR Part 17**Endangered and Threatened Wildlife and Plants; Proposal To Determine *Hoffmanseggia Tenella* To Be an Endangered Species**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine endangered status for a plant, *Hoffmanseggia tenella* (slender rush-pea). Historically, this plant has been reported from three localities in Nueces and Kleberg Counties, Texas. Currently, only one population is known to exist and it is threatened by the encroachment of King Ranch bluestem and bermuda grass. There is no current management plan for slender rush-pea, nor is there State or Federal protection. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Hoffmanseggia tenella*. Critical habitat is not being proposed at this time. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 22, 1985. Public hearing requests must be received by January 7, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, S.W., Room 407, Albuquerque, New Mexico

FOR FURTHER INFORMATION CONTACT:

Peggy Olwell, Botanist, Endangered Species Staff, Albuquerque, New Mexico (see **ADDRESSES** above) (505/766-3972, FTS 474-3972).

SUPPLEMENTARY INFORMATION:**Background**

Historically, this plant has only been known from two Texas counties. It was first collected by Mrs. F. E. Clements between Robstown and Alice, Nueces County, Texas on November 22, 1931. Tharp and Williams described the plant as *Hoffmanseggia tenella* (Williams 1936). Another collection was made in 1964 from the King Ranch in Kleberg County. The only other known records were collections from Nueces County by Mary Johnson in 1976 and Geyata Ajilvsgi in 1982. A field survey of the area, conducted in 1982, resulted in only one population (with only three individual plants) being found in Nueces County. This population was found near Petronilla Creek and State Highway 70 in an eroded area and along the highway in a gravel dump. Two plants in the existing population are located on private property, and one plant is located on adjacent State Highway right-of-way (Ajilvsgi, pers. comm., 1984).

Hoffmanseggia tenella is a perennial in the bean family with stems 8 to 15 centimeters (cm) tall terminating in a 3-5-flowered inflorescence without glands. The flowers are orange and approximately 5 millimeters (mm) long with 10 stamens. The leaves are bipinnately compound; petioles are up to 13 cm long, leaflets are in 5 or 6 pairs on each of 3 to 7 pinnae, are oblong, 2 to 4 mm long and 1 to 2 mm broad. The legumes are 12 to 15 mm long, 4 to 6 mm broad, and contain from 2 to 4 seeds. Flowering usually occurs from early March to June, sporadically thereafter depending upon the rainfall.

The one known population of *Hoffmanseggia tenella* occurs in the Blackland Prairie Area of the Gulf Coastal Prairie. The habitat of this plant is the hard clay soil of creek banks and associated barren areas where King Ranch bluestem is absent (Mahler 1982).

The surrounding vegetation consists largely of two grasses, King Ranch bluestem and bermuda, which have been introduced into the area for roadside management and range improvement. Observation of this taxon shows that it occurs in the lower seral stages of succession, and may possibly be a pioneer species. *Hoffmanseggia tenella* is an invader species of highly disturbed soils where it persists until it is crowded out by competition from other encroaching species. The population biology and ecology of this species are relatively unknown and additional studies are needed.

This first Federal action involving this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and of its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Hoffmanseggia tenella* was included in the 1975 Smithsonian report, the July 1, 1975 notice, and the June 16, 1976 proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn, although a 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979 *Federal Register* (44 FR 70796), the Service published a notice withdrawing the June 16, 1976 proposal, along with four other proposals which had expired. A revised notice for plants was published in the December 15, 1980 *Federal Register* (45 FR 82480) and included *Hoffmanseggia tenella* as a category 1 species. Category 1 comprises taxa for which the Service has substantial information on biological vulnerability and threats to support the appropriateness of proposing to list the taxa as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly

submitted on that date. The species listed in the December 15, 1980 Notice of Review were considered to be petitioned; and the deadline for a finding on those species including *Hoffmanseggia tenella* was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Hoffmanseggia tenella* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(ii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted and proposes to implement the action, in accordance with section 4(b)(3)(B)(ii) of the Act.

A status report compiled by Dr. W.F. Mahler in 1982 and investigations carried out by Service botanists and others have provided new biological data which are included in this proposal. These new data include recent documentation of low numbers of plants and threats to the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (49 FR 3890, to be codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hoffmanseggia tenella* Tharp & L.O. Wms. (slender rush-pea) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most serious threat to the continued existence of *Hoffmanseggia tenella* is the alteration of this species' habitat. The single known population in Nueces County was found growing in an eroded area, which indicates that this plant demands an ecological niche in one of the lower seral stages of succession (Mahler 1982). However, the habitat for *Hoffmanseggia tenella* in the Texas Gulf Coastal Prairie has been severely limited because non-native, introduced grasses, such as King Ranch bluestem and bermuda, have escaped into uncultivated areas. As a result, the native grasses and forbs are being eliminated from the natural vegetation. In addition, private and public land owners have altered the natural habitat to prevent soil erosion.

to improve rangeland, and to control prairie fires. Roadside management practices have diminished the waste areas along public roads and highways by seeding the area with King Ranch bluestem and bermuda. Private land owners have also adopted the practice of planting King Ranch bluestem to preserve rangeland from possible soil erosion, or to increase usable rangeland. These practices have destroyed the natural system of the Texas Gulf Coastal Prairie, which provided disturbed habitat for *Hoffmanseggia tenella*. The result of these practices has been that the habitat for *Hoffmanseggia tenella* on the Texas Gulf Coastal Prairie has been severely limited because the introduced grasses have escaped into uncultivated areas. Therefore, the native grasses and forbs are being eliminated from their natural habitat. With only one population in Nueces County, this species is extremely vulnerable, and is subject to complete elimination if there is any more modification to its habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade in this plant is not known to exist; however, critical habitat is not being proposed because of the potential for collecting and vandalism. The existing population is not located on Federal lands and therefore would not be protected from taking by the Endangered Species Act. Excessive recreational and scientific use is not known or anticipated.

C. *Disease or predation.* No threats are known.

D. *The inadequacy of existing regulatory mechanisms.* Currently, *Hoffmanseggia tenella* is not protected by either Federal or State laws.

E. *Other natural or manmade factors affecting its continued existence.* *Hoffmanseggia tenella* is in a particularly precarious situation because it is limited to one known population. The seriousness of this problem is compounded by this population consistency of only three plants. This species' genetic variability is severely limited and therefore less able to accommodate the stress of changes in its physical environment. With only one population known to exist, this taxon is especially vulnerable to minor artificial or natural disturbances (Mahler 1982).

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Hoffmanseggia tenella* as

endangered without critical habitat. Endangered status seems appropriate because there is only one known population of this species with three individual plants, and the habitat that this plant must have to exist is rapidly decreasing because of the introduction of King Ranch bluestem. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The Act does not protect endangered plants from taking or vandalism on lands which are not under Federal jurisdiction. This would result in an especially severe problem for *Hoffmanseggia tenella*, whose habitat is located along a state highway and is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Determining critical habitat for this species would make it more vulnerable to taking by collectors and to vandalism. Therefore, it would not be prudent to determine critical habitat for *Hoffmanseggia tenella* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery action, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies

to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. However, *Hoffmanseggia tenella* is not known to occur on Federal lands, and there are no known Federal actions that may affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Hoffmanseggia tenella*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition will apply to *Hoffmanseggia tenella*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. *Hoffmanseggia tenella* occurs primarily on private land. At present, no populations are known to exist on Federal land. It is expected that few collecting permits for this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit

Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Hoffmanseggia tenella*;
- (2) The location of any additional populations of *Hoffmanseggia tenella* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;
- (3) Additional information concerning the range and distribution of this species; and
- (4) Current or planned activities in the subject area and their possible impacts on *Hoffmanseggia tenella*.

Final promulgation of the regulation on *Hoffmanseggia tenella* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

- Mahler, W. F. 1982. Status report on *Hoffmanseggia tenella*. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico. 10 pp.
- Williams, L. O. 1936. Field and Herbarium Studies, IV. Annals of the Missouri Botanical Garden 23:451-452.

Author

The Primary author of this proposed rule is Peggy Olwell, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972, FTS 474-3972). The preliminary listing package was provided by Catherine Coats, Herbarium, Southern Methodist University, Dallas, Texas 75275. The editor is LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235-1975 FTS 235-1975). Status information was provided by Dr.

W. F. Mahler, Herbarium, Southern Methodist University, Dallas, Texas 75275 (214/692-2257).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation**PART 17—[AMENDED]**

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the family Fabaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) • • •

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Legume family.						
<i>Hottelenseggia tenella</i>	Slender rush-pea	U.S.A. (TX)	E		NA	NA

Dated: November 7, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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